IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR.

O R D E R

Surendra Kumar Kothari & ors. Versus Union of India through C.B.I. SPE, Jaipur.

S.B. Criminal Misc. Petition No. 353/2006

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Surendra Kumar Kothari & ors. Versus Union of India through C.B.I. SPE, Jaipur.

S.B. Criminal Misc. Petition No. 354/2006

and

Surendra Kumar Kothari & ors. Versus Union of India through C.B.I. SPE, Jaipur.

S.B. Criminal Misc. Petition No. 355/2006

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Date of Order: October 16, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Pankaj Sharma, for the petitioners.
Mr. Panney Singh, for the C.B.I.

BY THE COURT:

By these three criminal miscellaneous petitions under Section 482 of the Code of Criminal Procedure, 1973 (for short,

"the Code" hereinafter), the petitioners challenged the orders dated 17-12-2005, 7-1-2006 and 7-1-2006 passed by the Special Judge (CBI) Cases, Jodhpur and Additional Chief Judicial Magistrate (CBI) Cases, Jodhpur (for short, "the trial Courts" hereinafter) in Criminal Cases No. 34/1998, 04/2001 and 01/2001 respectively, whereby the trial Courts dismissed the applications filed by the petitioners under Section 320 of the Code for compounding the offences.

I have heard learned counsel for the parties. Carefully perused the orders impugned passed by the trial courts.

The facts, in a nut shell, are that the petitioner No.1 to 3, who are real brothers, were carrying on business in the name and style of M/s. Vardhman Pratisthan, Gauri Shankar Surendra Kumar, Surendra Kumar Kothari & Co. and Mahalaxmi Ginning & Company; and petitioner No. 4 is their Munim. They used to conduct their business through the Oriental Bank of Commerce, Branches at Dholipal, Sri Ganganagar, Pakka Sarna and Hanumangarh Junction. On a source report, the C.B.I., Special Police Establishment, Jaipur registered four criminal cases against the petitioners for the offences under Sections 420, 467, 468, 471and 120-B IPC and Section 5 (2) read with Section 5 (1) (d) of the Prevention of Corruption Act, which are pending before the trial Courts.

It is contended by the learned counsel for the petitioners that there were civil disputes between the petitioners and the bank, for which civil suits were instituted and on depositing the entire amount, the civil suits have been decided by the civil courts on the basis of the compromise and "No Dues Certificates" have been issued by the said bank. It is further contended that the trial courts erred in law and on facts in declining to allow the parties to compound the offences and rejecting the applications filed by the petitioners under Section 320 of the Code.

Learned Public Prosecutor has supported the orders passed by the trial Courts.

Section 320 of the Code of Criminal Procedure deals with compounding of offences. The relevant provisions contained in sub-sections (1),(2), (6), (8) and (9), which are relevant in this regard, are reproduced hereunder:-

> **"320. Compounding of offences.** (1)The offences punishable under the the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table.....
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> (2)The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table...

(6)A High Court or Court of Session acting in the exercise of its powers of revision under Section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(8)The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9)No offence shall be compounded except as provided by this section."

The offences which are specified in the table under sub-section (1) of Section 320 of the Code are compoundable without permission of the Court. The offences which are specified in the table under sub-section (2) of Section 320 of the Code are made compoundable with the permission of the court before which any prosecution for such offence is pending. From the language of sub-section (2) of Section 320 of the Code, it is clear that the offences in the table under sub-section (2) of Section 320 of the Code cannot be compounded unless the court before which any prosecution for such offence is pending, permits. There is no other provision in the Code which provides compounding of offence other than those specified in sub-sections (1) and (2) of section 320 of the Code. Sub-section (6) of Section 320 of the Code provides that High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence

which such person is competent to compound under this section. Sub-section (9) of Section 320 of the Code provides that no offence shall be compounded except as provided by this section. Sub-section (9) starts with non-obstante clause. Thus, this sub-section puts an absolute bar to compound the offences except as provided in sub-sections (1) and (2) of section 320 of the Code.

Offences which are not specified in any of the two tables provided in sub-sections (1) and (2) of Section 320 of the Code cannot be allowed to be compounded, as held by a Three Judge Bench of the Hon'ble Supreme Court in Surendra Nath Mohanty & Anr. Vs. State of Orissa, 1999 Cr.L.J. 3496 (SC); and a Full Bench of this Court in Mohan Singh & ors. Vs. State of Rajastha, 1992 (1) RLR 1.

In the instant case, except the offence under Section 420 IPC, the other offences under Section 467, 468, 471, 120-B IPC, as also under Sections 5 (2) and 5 (1) (d) of the Prevention of Corruption Act are not compoundable. So far as offence under Section 420 IPC is concerned, it can be compounded by the person who has been cheated. In the instant matters, no application for compounding the offences has been filed by the said bank, therefore, even the offence under Section 420 IPC cannot be allowed to the compounded.

Even otherwise also, the instant are not the cases lodged on the complaint by the concerned bank but on some

secret information, it was the CBI, Special Police Establishment, Jaipur, which lodged the first information reports and prosecuting the case. Therefore, there arises no question of compounding the offences.

On careful perusal of the facts and the legal position, as also keeping in view the decisions of the Three Judge Bench of the Hon'ble Supreme Court in Surendra Nath Mohanty & Anr. Vs. State of Orissa (supra) and a Full Bench decision of this Court in Mohan Singh & ors. Vs. State of Rajasthan (supra), I do not find any error, illegality or perversity in the orders impugned passed by the trial Courts requiring any interference under the inherent jurisdiction.

All the criminal miscellaneous petitions lack merit and dismissed accordingly. The stay petitions also stand dismissed.

(H.R. PANWAR), J.

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